



March 17, 2010

Manucher Alemi
Manager, Office of Water Use Efficiency
Department of Water Resources
901 P Street, Third Floor
Sacramento, CA 94236

RE: Comments on SB 7X 7 Technical Methodologies and Compliance Method 4

Dear Dr. Alemi,

On behalf of the Natural Resources Defense Council (NRDC), which has more than 250,000 members and activists in California, I am writing to provide comments on the Department of Water Resources' (DWR) implementation of SB 7X 7. As you know, NRDC was one of the chief co-sponsors of the legislation that became SB 7X 7, and attorneys from NRDC attended both DWR listening sessions for SB 7X 7 on March 8 and March 10, 2010. DWR's final 20x2020 report confirms that achieving a 20 percent reduction in per capita water use by 2020 through improved conservation and water use efficiency, is an achievable requirement that can yield significant benefits to the environment and ratepayers.

SB 7X 7 requires DWR, through a public process and in consultation with the California Urban Water Conservation Council (CUWCC), to establish certain methodologies and criteria for implementation of SB 7X 7, as well as developing a fourth method for establishing compliance targets. NRDC is encouraged that DWR conducted listening sessions and is convening working groups to assist DWR and the CUWCC in implementing the Act. We look forward to participating in those public processes, including the Urban Stakeholder Committee and CII Task Force. We offer the following preliminary comments for consideration by DWR, CUWCC and these working groups.

First, the statutory provisions authorizing adjustments to the compliance target, as a result of "extraordinary" events like fire suppression or as a result of "substantial" changes in commercial, industrial, and institutional (CII) water use, must actually reflect a "substantial" change in water use as compared to water use by these sectors during the baseline period.¹ The use of the word "substantial" in sections 10608.24(d)(1)(B) and (C) evidences a legislative intent that these adjustments not be used for routine or minor changes in water use.

Second, the compliance adjustment provided in section 10608.24(d)(1)(A) specifically refers to "Differences in evapotranspiration and rainfall in the baseline period compared to the compliance reporting period." SB 7X 7 utilizes an extended baseline period in part to capture a

¹ They should not be considered "substantial" merely because they tip an agency from compliance to noncompliance with the target, as one commenter suggested in the March 8 listening session.

range of weather and climatic conditions. DWR's compliance adjustment for this factor should compare the conditions in the reporting period with the average conditions during the baseline period. If the compliance year is within the range used in the baseline period, and not substantially different from the average during the baseline period, a substantial compliance adjustment would likely not be warranted. In addition, it is important to recognize that weather and climatic factors not only can result in higher water use in a particular year, but they can also result in lower water use. Thus DWR's criteria for compliance adjustments as a result of "evapotranspiration and rainfall" must consider both increases and decreases in water use as a result of these climatic factors, and ensure they are applied equally.

Third, section 10608.20(b)(4) requires DWR to establish a fourth method for complying with SB 7X 7, and provides certain criteria that must be achieved by this method. Most importantly, the statute explicitly requires that this fourth method achieve a 20 percent improvement in urban water use efficiency if implemented statewide. Many of the criteria identified in section 10608.20(b)(4)(A)-(F) are incorporated into the Act, as well as being reflected in the other compliance methods. For example, the extended baseline period, which applies regardless of the compliance method that is chosen, credits water agencies that have invested significantly in improved water use efficiency and helps avoid undue burdens on those communities that have achieved high water use efficiency. *See* Water Code § 10608.12(b).

We appreciate the work that the Association of California Water Agencies (ACWA) put forward in developing its March 1, 2010 proposal. However, as ACWA admitted in the March 8 listening session, this proposal does not meet this statutory requirement of achieving a 20% reduction in per capita water use if implemented statewide. Equally important, as we understand it, their proposal merges elements of methods 2 and 3 in a manner that requires substantially less improvement in water use efficiency that can be achieved and that should be required under the Act.² Therefore, we strongly urge DWR to reject ACWA's March 1, 2010 proposal.

Finally, some comments were raised at the listening sessions regarding gross water use, and by extension "what counts" towards the compliance targets. The legislature defined what constitutes "gross water use" in section 10608.12(g). One commenter at the March 8 listening session urged that water leaks be excluded from the calculation of gross water use, but this would violate the explicit Legislative mandate. Moreover, we concur with other speakers and staff that the gross water calculation should include such losses in order to create incentives for fixing these leaks and improving the efficiency of the water supply system. Likewise, with

² ACWA's proposal would require substantially lower targets for residential indoor, landscape, and CII water use efficiency than the targets required under the second method. With respect to landscape water use, the efficiency targets in method 2 (section 10608.20(b)(2)) already address population density and landscape size, as well as climatic differences within the State, by requiring compliance with the provisions of the Model Landscape Ordinance, applying local climatic conditions to the landscape area to establish the target. ACWA's proposal inappropriately combines methods 2 and 3 to provide a weaker alternative to either of them. Likewise, ACWA's proposal appears to require only a 5% reduction in indoor water use ("Calculate your indoor residential water use target by multiplying your baseline indoor residential water use by 0.95"), with no justification for such a low requirement. In addition, the CII target in ACWA's proposal appears to double count efficiency improvements in the CII sector, as they would already be included in the extended baseline period. The second method already accounts for differences in climate, land use, prior conservation investments, and other factors, and it should not be weakened under the guise of a fourth method.

respect to “what counts,” SB 7X 7 credits water recycling towards the compliance targets provided it meets certain requirements (*see* section 10608.12(m)), but generally focuses on improving water use efficiency. NRDC strongly believes that water recycling, groundwater cleanup, stormwater capture, and some other regional water supply tools can significantly contribute to a more environmentally sustainable and cost-effective portfolio of water supplies. SB 7X 7 directs the Department to create incentives to promote these regional water supply tools. *See* Water Code § 10608.50. However, SB 7X 7 excludes these supplies from the compliance targets, in order to ensure significant improvement in statewide water use efficiency. DWR’s fourth method must be consistent with the other three methods in excluding these new sources from the compliance targets.

Thank you for consideration of our view. Please feel free to contact us at your convenience if you have any questions. We look forward to working with DWR, the CUWCC, and other stakeholders in implementing SB 7X 7.

Sincerely,

A handwritten signature in cursive script that reads "Doug Obegi".

Doug Obegi